

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR.

O.A. No. 320/95

Date of Order: 04.03.1998

Ajay Kumar Bora s/o Shri Shrikishan Bora, Switch Board Attendant,
o/o G.E. (AF), Barmer c/o Ranjeet Joshi, Advocate, Kamla Nehru
Nagar, Jodhpur.

... Applicant

VERSUS

1. Union of India, through Defence Ministry, Government of India,
New Delhi.
2. Commander Works Engineer, Air Force, Jodhpur.
3. Garrison Engineer, Air Force, Barmer.

... Respondents

Mr. Ranjeet Joshi, Counsel for the applicant.

Mr. H.N. Calla, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

PER HON'BLE MR. GOPAL SINGH

The applicant, Ajay Kumar Bora, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the orders dated 28.9.1988 (Annexure A/1), PTO No. 51/94 dated 19.12.1994 (Annexure A/2) and for payment of salary from the date of his appointment in the scale of Rs. 950-20-1150-EB-25-1500.

2. The admitted facts of the case are that on a requisition from the Employer department, the Employment Exchange had forwarded the name of the applicant for recruitment to the post of Switch Board Attendant. The applicant appeared for the interview and was selected for the post of Switch Board Attendant (for short, SBA) vide letter dated 15.4.1987 (Annexure A/4). Further, the applicant was appointed as SBA temporarily in

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terms of order dated 22.6.1987 (Annexure A/5) in the scale of Rs. 950-20-1150-EB-25-1500. The services of the applicant were terminated under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965, vide order dated 2.1.1988. This order of termination of service was set aside by this Tribunal in a decision rendered in O.A. No. 67/88. Further, the Department vide its order dated 28.9.1988 (Annexure A/1) reduced the pay scale of the applicant from Rs. 950-20-1150-EB-25-1500 to Rs. 800-15-1010-EB-20-1150. Aggrieved by this order, the applicant has filed the present application.

3. Notice was issued to the respondents. They have filed their reply in which it has been mentioned that the application is barred by limitation and reduction in the pay scale was an administrative order for correcting the mistake committed earlier. It has also been clarified that since the applicant is not an I.T.I. qualified person, he could only be granted the scale of Rs. 800-15-1010-EB-20-1150.

4. We have heard the learned counsel for both the parties.

5. On the point of limitation, it has been argued by the learned counsel for the applicant that at the point of time when the pay scale was reduced, the applicant was not in service and he was pursuing his O.A. No.67/88 in this Tribunal. The applicant came to know of the reduction of the pay scale on 10.6.1995 when the payment on reduced scale was made to him and immediately thereafter, the applicant filed this O.A. on 22.8.1995. We thus find that the application is well within the limitation period.

6. The learned counsel for the respondents in their reply have also indicated the educational and technical qualifications for skilled grade vide letter dated 11.1.1985 (Annexure R/2). The main arguments put-forth by the learned counsel for the respondents is that since the applicant is

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not I.T.I. qualified, he could not have been given the scale of Rs.950-20-1150-EB-25-1500. A perusal of the record reveals that the applicant was offered a scale of Rs.950-1500 at the time of his appointment though it was known that the applicant is not I.T.I. qualified. From the schedule of posts and qualification enclosed to the requisition letter dated 14.2.1987 (Annexure R/1) of the respondents, addressed to the Employment Exchange it appears that for the post of SBA no technical qualification like I.T.I. pass was indicated. Hence the applicant who was not possessing I.T.I. certificate of the concerned trade was sponsored by the Employment Exchange. Therefore, the respondents cannot now come round and say that the applicant was not I.T.I. pass hence entitled only to pay scale of 800-1150 (semi skilled grade). The arguments of the learned counsel for the respondents are devoid of any force, hence rejected.

7. In other similar cases i.e., O.A. No.247/89 - Mahendra Singh & Ors. Vs. Union of India & Ors. and O.A. No. 417/89 - Nirmal Kumar & Ors. Vs. U.O.I. & Ors., decided on 10.5.1993, this Tribunal had observed as follows:

"3. The main point argued by the learned counsel for the applicants is that the principles of natural justice have been flouted by the respondents inasmuch as the applicants were appointed in the scale of Rs.950-1500 but suddenly by impugned order (Annexure A/1) and other relevant annexures of other applicants the pay scale was reduced without any notice to the applicants to that of Rs.800-1150. We have perused the replied of the respondents. We find that there is no satisfactory explanation given by the respondents for not giving any notice to applicants before changing their pay scales. They have admitted that they had not given any notice to the applicant before issuing Annexure A/1 and other annexures. The reason given by the respondents that the order Annexure A/9 and others were issued by oversight and, therefore, they issued the correct order Annexure A/1 and the other relevant orders, is also not satisfactory. Even if a wrong order had been issued, the principles of natural justice requires, the applicant should have been given a reasonable opportunity before changing the scale. In view of this, we are of the opinion that the principles of natural justice have been flouted and as such, there is no other alternative except to quash Annexure A/1 to Annexure A/7 in O.A. No.247/89 and Annexures A/1 to A/8 in O.A. No. 417/89 all dated 28.9.1988.

4. In case any recovery has been made in pursuance of these impugned orders from all or any of the applicants, the same shall be refunded back to the concerned applicant within a period of three months. The O.As are accordingly allowed with no order as to costs."

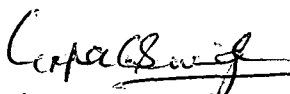
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8. In the circumstances, we feel that this application has much strength in it and deserves to be allowed.

9. The O.A. is accordingly allowed with the following observations:-

- (i) The orders Annexure A/1 dated 28.9.1988 and Annexure A/2 dated 19.12.1994 are set aside;
- (ii) The applicant should be given the pay scale of Rs.950-20-1150-EB-25-1500 from the date of his appointment with all consequential benefits within a period of three months and
- (iii) If any recovery has been made due to reduction in scale from the applicant the same should be refunded back to him within the time period given above.

10. Parties are left to bear their own costs.


(Gopal Singh)
Administrative Member


(A.K. Misra)
Judicial Member

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Section officer (Record)